

SECOND REGULAR SESSION
[P E R F E C T E D]
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILLS NOS. 959 & 598
90TH GENERAL ASSEMBLY

Reported from the Committee on Aging, Families and Mental Health, March 9, 2000, with recommendation that the Senate Committee Substitute do pass.

Senate Committee Substitute for Senate Bills Nos. 959 and 598, adopted April 18, 2000.

Taken up for Perfection April 18, 2000. Bill declared Perfected and Ordered Printed, as amended.

TERRY L. SPIELER, Secretary.

4174S.05P

AN ACT

To repeal sections 197.405, 197.410, 197.420, 197.425, 197.430, 197.435, 197.440, 197.450, 197.455, 197.460, 197.470, 197.477, 660.250, 660.260 and 660.300, RSMo 1994, and sections 197.400, 197.415 and 197.445, RSMo Supp. 1999, relating to in-home care for the elderly, and to enact in lieu thereof twenty-two new sections relating to the same subject, with penalty provisions.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 197.405, 197.410, 197.420, 197.425, 197.430, 197.435, 197.440, 197.450, 197.455, 197.460, 197.470, 197.477, 660.250, 660.260 and 660.300, RSMo 1994, and sections 197.400, 197.415 and 197.445, RSMo Supp. 1999, are repealed and twenty-two new sections enacted in lieu thereof, to be known as sections 197.400, 197.405, 197.410, 197.415, 197.420, 197.422, 197.425, 197.430, 197.435, 197.440, 197.445, 197.450, 197.455, 197.460, 197.474, 197.477, 660.250, 660.252, 660.260, 660.300, 660.302 and 660.303, to read as follows:

197.400. As used in sections 197.400 to [197.475] **197.477**, unless the context otherwise requires, the following terms mean:

(1) "**Branch office**", a location or site from which an organization provides services within a portion of the total geographic area served by the parent company. **A**

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

branch office is part of a company and is located sufficiently close to it to share administration, supervision and services in a manner that renders it unnecessary for the branch to independently meet the requirements of a home care company;

(2) "Client residence", a temporary or permanent domicile of a person receiving home health services, professional services or paraprofessional services;

(3) "Council", the home [health services] care advisory council created by sections 197.400 to [197.475] 197.477;

[(2)] (4) "Deficiency", a statement of a deficit practice;

(5) "Department", the department of health;

(6) "Home care company", any public or private organization or part of an organization that is staffed or equipped to provide home health services, professional services or paraprofessional services;

[(3)] (7) "Home health [agency] category", a category of home care company which is a public [agency] or private organization or [a subdivision or subunit of an agency or organization that provides two or more home health services at the residence of a patient according to a physician's written and signed plan of treatment] part of an organization that provides home health services and is eligible to be certified as a Medicare provider of home health services, as defined in Title XVIII of the Social Security Act;

[(4)] (8) "Home health services", any [of the following items and services provided at the residence of the patient on a part-time or intermittent basis: nursing, physical therapy, speech therapy, occupational therapy, home health aid, or medical social service] services provided at the residence of a client which, at a minimum, meet the standards established pursuant to 42 C.F.R. 484, Medicare Conditions of Participation: Home Health Agencies;

[(5)] "Part-time or intermittent basis", the providing of home health services in an interrupted interval sequence on the average of not to exceed three hours in any twenty-four-hour period;

(6) "Patient's residence", the actual place of residence of the person receiving home health services, including institutional residences as well as individual dwelling units;

(7)] (9) "Local public health agency", an organization that promotes preventative health services for all of its citizens and is established by a city or county by appropriating funds from their general revenue taxing authority or pursuant to chapter 70, RSMo, or chapter 205, RSMo;

(10) "Paraprofessional home care category", a category of home care company which is any public or private organization or part of an organization that provides paraprofessional services;

(11) "Paraprofessional services", personal care-related services provided at the residence of a client by an unlicensed caregiver that are unskilled in nature, may require a physician order, plan of care or service plan, and may include certain limited

nursing services as described in state regulation;

(12) "Physician", a person licensed by the state board of registration for the healing arts pursuant to the provisions of chapter 334, RSMo, to practice in this state as a physician and surgeon;

[(8)] (13) "Plan of [treatment] care", a [plan reviewed and signed as often as medically necessary by a physician or podiatrist, not to exceed sixty days in duration, prescribing items and services for an individual patient's condition] **written plan for home health services and professional services based on a client's diagnosis and an assessment of his or her immediate and long-range needs and resources. A plan of care is established in consultation with a home care team that may include a physician, podiatrist, staff members of the company, a client and members of the client's family;**

[(9)] (14) "Podiatrist", a person licensed by the state board of podiatry pursuant to the provisions of chapter 330, RSMo, to practice in this state as a podiatrist;

[(10) "Subunit" or "subdivision", any organizational unit of a larger organization which can be clearly defined as a separate entity within the larger structure, which can meet all of the requirements of sections 197.400 to 197.475 independent of the larger organization, which can be held accountable for the care of patients it is serving, and which provides to all patients care and services meeting the standards and requirements of sections 197.400 to 197.475]

(15) **"Professional home care category", a category of home care company which is any public or private organization or part of an organization that provides professional services;**

(16) **"Professional services", services, other than home health services, provided at the residence of a client by a health care professional who is considered by the state as being qualified to provide such services. Such services are provided on a per visit, hourly or shift basis and may require a plan of care, service plan or an order signed by a physician, podiatrist or other practitioner as allowed by state law;**

(17) **"Sanction", actions to be determined by the department and assessed against individuals who have been proven to have violated the provisions of sections 197.400 to 197.477 and which may include, but are not limited to, suspension or revocation of licensure;**

(18) **"Service plan", a written plan for paraprofessional services developed and agreed upon by a client and provider that includes a description of services to be provided and a schedule or frequency of such services;**

(19) **"Supervision", authoritative guidance given by a qualified person, including initial direction and periodic direction or indirect monitoring of services;**

(20) **"Survey inspection", monitoring by the department for compliance with state regulations related to sections 197.400 to 197.477, including investigation of complaints.**

197.405. 1. [No home health agency, including Medicare and Medicaid providers, shall

provide two or more of the home health services covered by subdivision (4) of section 197.400 or shall hold itself out as providing such home health services or as a home health agency] **No public or private organization or part of an organization shall hold itself out as a home care company or as providing home health services, professional services or paraprofessional services** unless it is licensed and registered in accordance with the provisions of sections 197.400 to [197.475] **197.477**.

2. No person shall establish, conduct or maintain a home care company in this state without maintaining a business location within the state and a valid license issued by the department. A branch office of a licensed home care company shall not require separate licensing.

3. The paraprofessional category of a home care company that provides services licensed, certified, regulated or contracted with the division of aging in the department of social services may elect to be regulated by the division of aging and shall be exempt from licensure by the department of health. Any home care company that elects to be exempt from the home care paraprofessional category pursuant to this subsection shall be monitored, regulated and overseen by the division of aging to assure that, regardless of payer source, all individuals receiving paraprofessional services by such company, including individuals who are not clients of the division of aging, are included as a responsibility of the division of aging.

4. No person shall interfere with or prevent any authorized representative of the department or the attorney general from enforcing the provisions of sections 197.400 to 197.477.

197.410. [1. Persons desiring to receive a license to operate a home health agency in the state of Missouri shall file a written application with the department of health on a form prescribed by the director of the department.

2. The application shall be accompanied by a six hundred-dollar license fee] **A license shall be renewed annually upon approval by the department if the following conditions are met:**

(1) An application for renewal is completed on forms provided by the department, filed with the department and accompanied by the required nonrefundable license fee;

(2) The company is in compliance with the requirements in sections 197.400 to 197.477, as evidenced by a survey inspection by the department which shall occur prior to initial licensure, once a year for the first three years and at least once every thirty-six months thereafter. Except for the inspection prior to initial licensure, such inspections shall be conducted:

(a) Without the prior notification of the company; and

(b) At times of the day, on dates and at intervals which do not permit companies

to anticipate such inspections;

(3) Each initial application for a home care company shall be filed on forms provided by the department and accompanied by the required nonrefundable license fee. Such application must be approved by the department prior to initiating client care.

The department of health shall coordinate initial and annual inspections of all home care categories and other inspections when possible.

197.415. 1. [The department shall review the applications and shall issue a license to applicants who have complied with the requirements of sections 197.400 to 197.475 and have received approval of the department.

2. A license shall be renewed annually upon approval of the department when the following conditions have been met:

(1) The application for renewal is accompanied by a six-hundred-dollar license fee;

(2) The home health agency is in compliance with the requirements established pursuant to the provisions of sections 197.400 to 197.475 as evidenced by a survey inspection by the department which shall occur at least every thirty-six months for agencies that have been in operation thirty-six consecutive months from initial inspection. The frequency of inspections for agencies in operation at least thirty-six consecutive months from the initial inspection shall be determined by such factors as number of complaints received and changes in management, supervision or ownership. The frequency of each survey inspection for any agency in operation less than thirty-six consecutive months from the initial inspection shall occur and be conducted at least every twelve months;

(3) The application is accompanied by a statement of any changes in the information previously filed with the department pursuant to section 197.410.

3. Each license shall be issued only for the home health agency listed in the application. Licenses shall be posted in a conspicuous place in the main offices of the licensed home health agency.

4.] If the application review is not completed prior to the expiration of a license and the company is not at fault for the failure to complete the application review process, the department may issue a temporary operating permit of sufficient duration to allow for state review of the home care company's relicensure application.

2. Each license shall be issued only for the home care company listed on the application. Such license shall be:

(1) Posted in a conspicuous place in the office of the licensed home care company; or

(2) Made available for review upon request.

3. Any license issued shall state the licensure category or categories for which

the license is issued, the name of the home care company to whom it is issued, the expiration date, and any additional information or special limitations that the department may require by rule.

4. If a home care company is relocating, the company shall notify the department in writing thirty days prior to the intended relocation. The department may provide written notification to the home care company amending the current license to reflect the new location.

5. In lieu of any survey required by sections 197.400 to [197.475] 197.477, the department may accept in whole or in part written reports of the survey of any state or federal agency, or of any professional accrediting agency, such as the joint commission on accreditation of health care organizations and the community health accreditation program, if such survey:

(1) Is comparable in scope and method to the department's surveys; and

(2) [Is conducted within one year of initial application or within thirty-six months for the renewal of the home health license as required by subdivision (2) of subsection 2 of this section]

Meets all required time frames; and

(3) Is provided to the department with sufficient documentation to assure that the home care company is in compliance with the requirements in sections 197.400 to 197.477.

6. Services provided pursuant to chapter 338, RSMo, shall be excluded from survey inspection.

197.420. **1.** A license shall not be transferable or assignable. When a home [health agency] **care company** is sold or ownership or management is transferred, or the corporate legal organization status is [substantially] changed, the license of the [agency] **company** shall be voided and a new license obtained. Application for a new license shall be made to the department in writing[, at least ninety days] prior to the effective date of the sale, transfer, or change in corporate status. The application for a new license shall be on the same form, containing the same information required for an original license, and shall be accompanied by [a license fee of six hundred dollars. The department may issue a temporary operating permit for the continuation of the operation of the home health agency for a period of not more than ninety days pending the survey inspection and the final disposition of the application. The department shall require all licensed home health agencies to submit statistical reports. The content, format, and frequency of such reports shall be determined by the department with council approval] **the required nonrefundable license fee.**

2. The department may issue a temporary operating permit of sufficient duration to allow the department to evaluate an application for a license submitted as a result of a change in ownership.

197.422. The department shall require all licensed home care companies to

submit statistical reports. The content, format and frequency of such reports shall be established by the department in conjunction with the home care advisory council and shall not include financial information.

197.425. In addition to the survey inspection required for licensing or license renewal, the department may [make other survey inspections] **conduct survey inspections** during normal business hours. Each home [health agency] **care company** shall allow the department or its authorized representatives to enter upon its premises during normal business hours for the purpose of conducting the survey [inspection] **inspections**.

197.430. After completion of each department [survey] **inspection**, a written [report] **statement** of the findings with respect to compliance or noncompliance with the provisions of sections 197.400 to [197.475] **197.477** and the standards established hereunder as well as a list of deficiencies found shall be prepared. A copy of the [report] **statement** and the list of deficiencies found shall be served upon the home [health agency] **care company** within fifteen business days following the [survey] inspection. The list of deficiencies shall specifically state the statute or rule which the home [health agency] **care company** is alleged to have violated. If the home [health agency] **care company** acknowledges the deficiencies found by the [survey] inspection, the home [health agency shall inform the department of the time necessary for compliance and] **care company** shall file a plan of correction with the department **within thirty days of the inspection completion date**. If the [home health agency] **company** does not acknowledge the deficiencies, it [may request a resurvey] **shall request a reinspection** by the department. If, after the [resurvey] **reinspection**, the home [health agency] **care company** still does not agree with the findings of the department, it may seek a review of the findings of the department by the administrative hearing commission **in accordance with chapter 621, RSMo. In case of immediate client jeopardy, immediate sanctions may be imposed.**

197.435. **1.** Any person wishing to make a complaint against a home [health agency licensed under] **care company licensed pursuant** to the provisions of sections 197.400 to [197.475] **197.477** may file the complaint **orally or** in writing with the department setting forth the details and facts supporting the complaint. [If the department determines the charges are sufficient to warrant a hearing to determine whether the license of the home health agency should be suspended or revoked, the department shall fix a time and place for a hearing and require the home health agency to appear and defend against the complaint. A copy of the complaint shall be given to the home health agency at the time it is notified of the hearing. The notice of the hearing shall be given at least twenty days prior to the date of the hearing. The hearing shall be conducted by the administrative hearing commission in accordance with the provisions of chapter 621, RSMo.] **The department shall investigate all complaints and prepare a written statement of the investigative findings with respect to compliance or noncompliance with sections 197.400 to 197.477 and the standards established hereunder, as well as a**

list of deficiencies found which shall be served upon the home care company within fifteen business days following such investigation. The list of deficiencies shall specifically state the statute or rule which the home care company is alleged to have violated. If the company acknowledges the deficiencies found by the inspection, the company shall file a plan of correction with the department within thirty days of the inspection completion date. If the company does not agree with the findings of the investigation the company may seek a review of such findings by the administrative hearing commission in accordance with chapter 621, RSMo. In cases of immediate client jeopardy, immediate sanctions may be imposed.

2. Each employee of a home care company shall be responsible for reporting any evidence of abuse, neglect or exploitation of any client served by the home care company in accordance with state law.

197.440. 1. The department shall refuse to issue or shall suspend or shall revoke the license of any home [health agency] **care company** for failure to comply with any provision of sections 197.400 to [197.475] **197.477** or with any rule or standard of the department adopted [under] **pursuant to** the provisions of sections 197.400 to [197.475] **197.477** or for obtaining the license by means of fraud, misrepresentation[,] or concealment of material facts.

2. Any home [health agency] **care company** which has **had sanctions imposed**, been refused a license or which has had its license revoked or suspended by the department may seek a review of the department's action by the administrative hearing commission **in accordance with chapter 621, RSMo. A sanction shall be designed to minimize the time between identification of a problem and imposition of such sanction and shall provide for the imposition of incrementally more severe sanctions for repeated or uncorrected problems.**

3. A home care company shall not reapply for licensure for a six-month period following a final action by the department pursuant to this section.

4. A license shall not be issued or renewed if the operator, owner or any principle in the operation of the home care company has been convicted of any offense concerning the operation of a home care company or any offense that is reasonably related to the qualifications, functions or duties of a home care company. Notwithstanding any other provision of law to the contrary, the department shall have access to records involving an operator, owner or any principle in the operation of a home care company applying for or renewing a license pursuant to this chapter, where the applicant has been adjudicated and found guilty or entered a plea of guilty or nolo contendere in a prosecution pursuant to the laws of any state or of the United States for any offense reasonably related to the qualifications, functions or duties of any person who operates or owns a home care company licensed pursuant to sections 197.400 to 197.477. The department may deny, suspend or revoke the license

of any home care company whose operators, owners or any principles in the operation of the company have been convicted of such an offense.

5. The department shall promulgate rules to waive the restrictions pursuant to subsection 4 of this section for good cause. For purposes of this section, "good cause" means a determination by the department after examining the prior work history and other relevant factors that such operators, owners or principles do not present a risk to the health or safety of clients.

197.445. 1. **The department shall administer the provisions of sections 197.400 to 197.477.** The department may adopt reasonable rules and standards necessary to carry out the provisions of sections 197.400 to 197.477. [The rules and standards adopted shall not be less than the standards established by the federal government for home health agencies under Title XVIII of the Federal Social Security Act. The reasonable rules and standards shall be initially promulgated within one year of September 28, 1983.] **In promulgating regulations for the licensure of home care companies, the department shall establish licensure procedures for a home care category, professional home care category and paraprofessional home care category, with separate and distinct regulations for each of the three licensure categories. All rules shall be initially promulgated within one year of the effective date of this section. The regulations for the professional home care category shall not exceed the Medicaid private duty nursing regulations and the regulations for the paraprofessional category shall not exceed the Medicaid personal care regulations.**

2. The rules and standards adopted by the department pursuant to the provisions of sections 197.400 to 197.477 shall apply to all health services covered by sections 197.400 to 197.477 rendered to any patient being served by a home [health agency] **care company** regardless of source of payment for the service, patient's condition, or place of residence[, at which the home health services are ordered by the physician or podiatrist]. No rule or portion of a rule promulgated pursuant to the authority of sections 197.400 to 197.477 shall become effective unless it has been promulgated pursuant to the provisions of section 536.024, RSMo.

3. All agencies of the state or any of its political subdivisions shall assist and cooperate with the department as necessary to carry out the department's responsibility pursuant to sections 197.400 to 197.477.

197.450. 1. There is hereby created the "Home [Health Services] **Care** Advisory Council", which shall guide, advise and make recommendations to the department relating to the rules and standards adopted and the implementation and administration of sections 197.400 to [197.475] **197.477.**

2. Members of the council shall be residents of this state. The council shall consist of members who shall serve for a term of three years. No member may serve more than two successive full terms. [One member] **Two members** of the council shall be [a representative]

representatives of the department, and **one** such member shall serve as chairman of the council. [Three members] **One member** shall be [citizens] **a citizen** selected from the state at large and shall have no connection with any home [health agency. Five] **care company. Six** members shall be representatives of [home health agencies and one of these five members shall be selected from each of the following types of home health agencies:

- (1) Public sponsored home health agencies;
- (2) Institutional sponsored home health agencies;
- (3) Voluntary nonprofit home health agencies;
- (4) Private nonprofit home health agencies; and
- (5) For profit home health agencies] **each of the three home care licensure**

categories. Each category shall have at least one representative on the council.

3. All members of the council shall be appointed by the director of the department. The term of office of each member shall be for three years or until his **or her** successor is appointed; except that, of the members first appointed, three shall be selected for one year, three shall be selected for two years, and three shall be selected for three years. Before a member's term expires, the director of the department shall appoint a successor to assume his **or her** duties on the expiration of his **or her** predecessor's term. A vacancy in the office of a member shall be filled by appointment for the unexpired term.

4. The council shall meet not less than [quarterly] **twice** each year, **in person or by telecommunication**, at a place, day and hour determined by the [council] **department**. The council may also meet at such other times and places as may be designated by the chairman, or upon the request of the majority of the other members of the council.

5. Members of the council shall receive no compensation for their services, but shall be reimbursed, out of funds appropriated to the department for that purpose, for their actual and necessary expenses incurred in the performance of their duties.

197.455. The department may file an action in the circuit court for the county in which [any home health agency alleged to be violating the provisions of sections 197.400 to 197.475 resides or may be found] **the home care company is located** for an injunction to restrain the home [health agency] **care company** from continuing the violation **or sections 197.400 to 197.477.**

197.460. 1. The provisions of sections 197.400 to [197.475] **197.477** shall not apply to [individuals who personally provide one or more home health services if such persons are not under the direct control and doing work for and employed by a home health agency.

2. The provisions of sections 197.400 to 197.475 shall not apply to any person or organization conducting a home health agency by and for the adherents of any recognized church or religious denomination or sect for the purpose of providing services for the care or treatment of the sick or infirm who depend upon prayer or spiritual means for healing in the practice of the

religion of such church or religious denomination or sect.

3. The provisions of sections 197.400 to 197.475 shall not apply to any person or other entity which provides services pursuant to subdivision (18) of subsection 1 of section 208.152, RSMo, or provides in-home services pursuant to subdivision (21) of subsection 2 of section 660.050, RSMo] **the following:**

(1) Any person who is a single self-employed caregiver who provides one or more of the services defined in sections 197.400 to 197.477, when such services are not provided as an employee, or under agreement or contract with a home care company;

(2) Any person or other entity operating a home care company by and for the adherents of any recognized church or religious denomination or sect for the purpose of providing services for the care or treatment of the sick or infirm who depend upon prayer or spiritual means for healing in the practice of the religion of such church or religious denomination or sect;

(3) Any person or entity that provides services pursuant to subdivision (18) of subsection 1 of section 208.152, RSMo, or provides in-home services pursuant to subdivision (21) of subsection 2 of section 660.050, RSMo, or provides in-home services pursuant to Title XIX of the Social Security Act, or any service or program authorized by the division of aging;

(4) Any person or entity licensed, certified, contracted, employed or operated by the state or its political subdivisions to provide specialized services, including care, treatment, habilitation and rehabilitation exclusively to persons affected by mental disorders, mental illness, mental retardation, developmental disabilities, or alcohol or drug abuse, as defined in section 630.005, RSMo;

(5) Any person or entity licensed, certified, contracted, employed or operated by the state to provide home health, paraprofessional or professional services to patients or clients of the division of vocational rehabilitation in the department of elementary and secondary education;

(6) The first steps program in the department of elementary and secondary education;

(7) Exempt from licensing services provided by a local public health agency not funded by private pay or a third-party payer such as Medicare, Medicaid or health insurance;

(8) The services of a provider or program that are regulated by a state regulatory program, other than those administered pursuant to this chapter, may be exempt from licensure pursuant to this chapter if the department determines the other program's regulatory standards are substantially the same or exceed the requirements of this chapter. To be exempted pursuant to this subdivision, a provider or program shall request that the department review the standards under which the provider or

program is regulated. The department may require the provider or program to provide any information necessary to determine the comparability of the regulations.

2. Nothing in this section shall prohibit any person or entity from applying for a license pursuant to sections 197.400 to 197.477.

[197.470. All reports or documents collected by the department, or findings and decisions made by the department, under the provisions of sections 197.400 to 197.475, unless declared to be a confidential record under any other provision of law, shall be available to public inspection upon written request. The material requested shall be made available within thirty days after receipt of the request. The department may charge a reasonable fee for the copying of any material.]

197.474. The provisions of sections 197.400 to 197.477 shall be fully implemented by July 1, 2002.

197.477. Upon the completion of the final report of an inspection or evaluation of a health facility or agency or any part thereof pursuant to sections 190.235 to 190.249, RSMo, sections 197.010 to 197.120, sections 197.200 to 197.240, or sections 197.400 to 197.475, including any amendments thereto which may hereinafter be enacted by the general assembly or rule or regulation promulgated pursuant thereto, the department of health may disclose to the public reports of the inspections or evaluations showing the standards by which the inspections or evaluations were conducted, whether such standards were met, and, if such standards were not met, in what manner they were not met and how the facility proposed to correct or did correct the deficiencies. All other information whatsoever, including information and reports submitted to the department of health by governmental agencies and recognized accrediting organizations in whole or in part for licensure purposes pursuant to sections 190.235 to 190.249, RSMo, sections 197.010 to 197.120, sections 197.200 to 197.240, or sections 197.400 to 197.475, collected during such inspections or evaluations or information which is derived as a result of such inspections or evaluations shall be confidential and shall be disclosed only to the person or organization which is the subject of the inspection or evaluation or a representative thereof. **The material requested shall be made available within thirty days after receipt of the request. The department may charge a reasonable fee for the copying of any material.**

660.250. As used in sections 660.250 to 660.305, the following terms mean:

- (1) "Abuse", the infliction of physical, sexual, or emotional injury or harm including financial exploitation by any person, firm or corporation;
- (2) "Court", the circuit court;
- (3) "Department", the department of social services;
- (4) "Director", director of the department of social services or his designees;
- (5) "Eligible adult", a person sixty years of age or older or an adult with a handicap, as defined in section 660.053, between the ages of eighteen and fifty-nine who is unable to protect his

own interests or adequately perform or obtain services which are necessary to meet his essential human needs;

(6) "In-home services client", an eligible adult who is receiving services in his or her private residence through any in-home services provider agency;

(7) "In-home services employee", a person employed by an in-home services provider agency;

(8) "In-home services provider agency", a business entity under contract with the department or with a medicaid participation agreement or an agency licensed by the department of health as provided in sections 197.400 to 197.470, RSMo, which employs persons to deliver any kind of services provided for eligible adults in their private homes;

(9) "Least restrictive environment", a physical setting where protective services for the eligible adult and accommodation is provided in a manner no more restrictive of an individual's personal liberty and no more intrusive than necessary to achieve care and treatment objectives;

(10) "Likelihood of serious physical harm", one or more of the following:

(a) A substantial risk that physical harm to an eligible adult will occur because of his failure or inability to provide for his essential human needs as evidenced by acts or behavior which has caused such harm or which gives another person probable cause to believe that the eligible adult will sustain such harm;

(b) A substantial risk that physical harm will be inflicted by an eligible adult upon himself, as evidenced by recent credible threats, acts, or behavior which has caused such harm or which places another person in reasonable fear that the eligible adult will sustain such harm;

(c) A substantial risk that physical harm will be inflicted by another upon an eligible adult as evidenced by recent acts or behavior which has caused such harm or which gives another person probable cause to believe the eligible adult will sustain such harm;

(d) A substantial risk that further physical harm will occur to an eligible adult who has suffered physical injury, neglect, sexual or emotional abuse, or other maltreatment or wasting of his financial resources by another person;

(11) "Neglect", the failure to provide services to an eligible adult by any person, firm or corporation with a legal or contractual duty to do so, when such failure presents either an imminent danger to the health, safety, or welfare of the client or a substantial probability that death or serious physical harm would result;

(12) "Noncompliant client" or "noncompliant", an in-home client who is able to make decisions, but unwilling to accept assistance as authorized in the department plan of service necessary to meet his or her essential human needs when such unwillingness creates a likelihood of serious physical harm;

[(12)] **(13)** "Protective services", services provided by the state or other governmental or private organizations or individuals which are necessary for the eligible adult to meet his essential

human needs.

660.252. The department shall describe curriculum for training on identification and prevention of abuse and neglect that will be incorporated into all Medicaid participation agreements entered into between the department of social services and in-home services provider agencies.

660.260. Upon receipt of a report, the department shall [make] **initiate** a prompt and thorough investigation [to]. **Within twenty-four hours, the department shall investigate reports which indicate a clear and immediate danger. The department shall** determine whether or not an eligible adult is facing a likelihood of serious physical harm and is in need of protective services. The department shall provide for any of the following:

(1) Identification of the eligible adult and determination that the eligible adult is eligible for services;

(2) Evaluation and diagnosis of the needs of eligible adults;

(3) Provision of social casework, counseling or referral to the appropriate local or state authority;

(4) Assistance in locating and receiving alternative living arrangements as necessary;

(5) Assistance in locating and receiving necessary protective services; or

(6) The coordination and cooperation with other state agencies and public and private agencies in exchange of information and the avoidance of duplication of services.

660.300. 1. [Beginning January 1, 1993,] When any physician, dentist, chiropractor, optometrist, podiatrist, intern, nurse, medical examiner, social worker, psychologist, minister, Christian Science practitioner, peace officer, pharmacist, physical therapist, in-home services owner, **in-home services provider**, in-home services operator, in-home services employee, or employee of the department of social services or of the department of health or of the department of mental health **or employee or volunteer for a local area agency on aging or for an organized area agency on aging program** has reasonable cause to believe that an in-home services client has been abused or neglected, as a result of in-home services, he **or she** shall immediately report or cause a report to be made to the department. **If the report is made by a physician of the in-home services client, then the department shall maintain contact with the physician regarding the progress of the investigation. Any in-home services provider shall report to the department an in-home services client who is at risk of serious physical harm because the client is noncompliant with the department's plan of service.**

2. Upon notification by the in-home services provider of a client suspected to be noncompliant, the department nurse shall attempt to resolve the circumstances with the case manager and shall investigate the allegation when necessary. The nurse shall report to the referring provider about the status of the case within five business

days. If unable to resolve the situation, the department shall refer the client to the interdisciplinary case management team as established in subsection 3 of this section. The interdisciplinary case management team shall attempt to resolve the circumstances. If unable, the team shall issue a consensus report about the case and the client shall be identified as noncompliant. Providers of clients that have been identified as noncompliant by the team are not liable solely for the consequences of the client's noncompliant behavior.

3. The department shall establish ad-hoc interdisciplinary case management teams to assist the department, the client's case manager, and the client's in-home services provider by acting as consultants and by intervening in cases where the team's specialized expertise will supplement the plan of service. The department shall determine membership on the interdisciplinary case management teams on a case by case basis. The teams shall include at a minimum the client's case manager, a department nurse, an in-home services provider nurse, a long-term care specialist, a mental health professional as defined by 9 CSR 30-4.025 provided through the department of mental health, and may include a representative of law enforcement, a physician and other local resources. The mental health professional, shall, when appropriate, assume the role of co-case manager for the in-home services client. In cases in which the interdisciplinary case management team believes the client, as a result of a mental disorder, presents a likelihood of serious harm as defined in section 632.005, the interdisciplinary team shall refer the client to a mental health coordinator who shall conduct an investigation pursuant to section 632.300.

4. Local area agencies on aging shall provide volunteer training, if requested, to those persons listed in subsection 1 of this section regarding the detection and report of abuse and neglect, pursuant to this section.

[2.] **5.** Any person required in subsection 1 of this section to report or cause a report to be made to the department who fails to do so within a reasonable time after the act of abuse or neglect is guilty of a class A misdemeanor.

[3.] **6.** The report shall contain the names and addresses of the in-home services provider agency, the in-home services employee, the in-home services client, information regarding the nature of the abuse or neglect, the name of the complainant, and any other information which might be helpful in an investigation.

[4.] **7.** In addition to those persons required to report under subsection 1 of this section, any other person having reasonable cause to believe that an in-home services client has been abused or neglected by an in-home services employee may report such information to the department.

[5.] Upon receipt of a report, the department shall initiate a prompt and thorough investigation.

6.] **8.** If the investigation indicates possible abuse or neglect of an in-home services client, the investigator shall refer the complaint together with his **or her** report to the department director or his **or her** designee for appropriate action. If, during the investigation or at its completion, the department has reasonable cause to believe that immediate removal is necessary to protect the in-home services client from abuse or neglect, the department or the local prosecuting attorney may, or the attorney general upon request of the department shall, file a petition for temporary care and protection of the in-home services client in a circuit court of competent jurisdiction. The circuit court in which the petition is filed shall have equitable jurisdiction to issue an ex parte order granting the department authority for the temporary care and protection of the in-home services client, for a period not to exceed thirty days.

[7.] **9.** Reports shall be confidential, as provided under section 660.320.

[8.] **10.** Anyone, except any person who has abused or neglected an in-home services client, who makes a report pursuant to this section or who testifies in any administrative or judicial proceeding arising from the report shall be immune from any civil or criminal liability for making such a report or for testifying except for liability for perjury, unless such person acted negligently, recklessly, in bad faith, or with malicious purpose.

[9.] **11.** Within five working days after a report required to be made under this section is received, the person making the report shall be notified in writing of its receipt and of the initiation of the investigation.

[10.] **12.** No person who directs or exercises any authority in an in-home services provider agency shall harass, dismiss or retaliate against an in-home services client or an in-home services employee because he or any member of his **or her** family has made a report of any violation or suspected violation of laws, standards or regulations applying to the in-home services provider agency or any in-home services employee which he has reasonable cause to believe has been committed or has occurred.

[11.] **13.** Any person who knowingly abuses or neglects an in-home services client shall be guilty of a class D felony.

[12.] **14.** The department shall maintain the employee disqualification list and place on the employee disqualification list the names of any persons who have been finally determined by the department, pursuant to section 660.315, to have recklessly, knowingly or purposely abused or neglected an in-home services client while employed by an in-home services provider agency.

15. The department shall establish a procedure by which all in-home services clients will be categorized based on their care and condition needs after the initial qualification assessment. The department shall determine the criteria for each category by rule, pursuant to chapter 536, RSMo. The department may refer any client to an interdisciplinary case management team, as necessary. The department may authorize the in-home services provider nurse, licensed pursuant to chapter 335, RSMo,

to assist the department in the assessment of the client's condition upon initiation of services to determine the care needs of the client and establish a plan of services appropriate to meet the client's needs. After initial assessment of the client, nurse visits shall be authorized twice annually for clients with plans of service that do not include nurse visits as part of the plan for the purpose of assessing the client and the client's services. If the provider nurse believes that the plan of service needs alteration, the department shall be notified and the department shall make a client evaluation. All authorized nurse visits shall be reimbursed to the in-home services provider. All department authorized nurse visits shall be reimbursed outside of the nursing home cap for in-home clients whose services have reached one hundred percent of the average statewide charge for care and treatment in an intermediate care facility, provided that the services have been pre-authorized by the department.

16. All in-home clients shall be advised of their rights by the department at the initial evaluation. The rights shall include, but not be limited to, the right to call the department for any reason, including dissatisfaction with the provider or services. The department shall establish a process to receive these nonabuse and neglect calls other than the elder abuse and neglect hotline.

17. The department shall establish a quality assurance and supervision process for clients that assures the in-home services provider is reimbursed for any nurse assessment portion of the process.

660.302. 1. The department of social services shall investigate incidents and reports of elder abuse using the procedures established in sections 660.250 to 660.295 and shall promptly refer all suspected cases of elder abuse to the appropriate law enforcement agency and prosecutor and shall determine whether protective services are required pursuant to sections 660.250 to 660.295.

2. The division of aging and law enforcement agencies shall require training and cross-training of personnel regarding the proper handling of cases involving elder abuse. The division of aging, in cooperation with law enforcement agencies, shall, by rule, develop a checklist for division and law enforcement personnel to follow when investigating possible elder abuse.

3. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2000, shall be invalid and void.

660.303. 1. By July 1, 2001, the division of aging shall establish a telephone check-in pilot project in one area of the state to be designated by the division. Such pilot project shall require that a telephone check-in system be established for in-home services employees, as defined in section 660.250 to accurately document the actual time that such employees spend in clients' homes by requiring such employees to clock in and out of the client's home by telephone. Such system shall also require in-home services employees to thoroughly document the specific services delivered to clients.

2. The division may promulgate rules to implement the provisions of this section. No rule or portion of a rule promulgated under the authority of this section shall become effective unless it has been promulgated pursuant to chapter 536, RSMo.

Unofficial[?]

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